



# Nebraska Sales and Use Tax

## Construction Contractor 2015

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## Today's Agenda

- Overview of Sales and Use Tax
- Contractor Database
- State Agency Information Sharing
- Contractor Terms
- Contractor Option Transactions
- Contracts with Exempt Entities
- Erosion Control
- Building Materials and Fixtures for a Job Site Outside Nebraska
- Repair/Annexation of Exempt MME

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# Overview of Sales and Use Tax

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Overview of Sales and Use Tax

## What is a Sales Transaction?

- Sales tax is calculated on the gross receipts.
- Delivery location determines the rate of local tax.
- Retailers must collect and report sales tax or document why they didn't.

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Overview of Sales and Use Tax (continued)

## Taxable Services

- Animal specialty services
- Building cleaning
- Computer software training
- Detective services
- Installing/applying tangible personal property
- Motor vehicle towing, washing/waxing, painting
- Pest control services
- Recreational vehicle (RV) park services
- Security services
- Repair labor (with 5 exceptions)

For a complete list of taxable and nontaxable services, see the [Nebraska and Local Sales Tax Information Guide](#) on our website.

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Overview of Sales and Use Tax (continued)

## What is Use Tax?

- Use tax is due when Nebraska sales tax has not been paid on a taxable item or service purchased for use in Nebraska.
- Sales and use tax are not both due on the same transaction.
- The big difference is who remits the tax –
  - Sales tax is collected and remitted by the seller.
  - Use tax is paid directly to the department by the purchaser/consumer.

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Overview of Sales and Use Tax (continued)

## Use Tax and Sales Tax Have These Things in Common -

- They are imposed on the same transactions.
- They have the same exemptions.
- They are calculated at the same rate.
  - Where delivery occurs, or
  - Where first usage in Nebraska takes place.

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## Contractor Database

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Contractor Database

- Every construction contractor making payment to a subcontractor must withhold 5%;
- Unless the subcontractor is registered in the Department of Labor's Contractor Registration Database.

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Contractor Database (continued)

- A single definition of “contractor” is used for purposes of the Contractor Registration Act and construction contractor withholding. (This definition is slightly different than the sales and use tax definition of a contractor.)
- A centralized registration system is used for construction contractors.
- The Department of Labor administers the Contractor Database.

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# State Agency Information Sharing

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## State Agency Information Sharing

### Employee Classification Act LB 563

- Departments of Labor and Revenue.
- Labor will review whether workers are employees (Form W-2) or independent contractors (Form 1099).
- Revenue will review referrals from the Department of Labor.

LB 563 applies only to construction contractors and delivery companies.

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## Contractor Terms

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Contractor Terms

## Contractor Terms

- Construction Contractor
- Contractor Labor
- Building Materials
- Fixtures
- Contractor Options

For more information on Contractors, see [Reg-1-017](#).

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Contractor Terms (continued)

## Construction Contractor

- Makes repairs or improvements to real estate or items annexed to real estate.
- Arranges for annexation

Examples you may not have thought about –

- Landscapers who build or repair retaining walls.
- Interior designers who arrange for construction work to be done (hanging wallpaper).
- Providers of restoration services to real estate.

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Contractor Terms (continued)

## Contractor Labor

- Annexing building materials to real estate.
- Repair of a structure.
- Repair of building materials that are or will be annexed to real estate.

Example: Hanging drywall.

Charges for contractor labor are not taxable.

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Contractor Terms (continued)

## Contractor Labor

- If you install telephone, cable, or satellite television, or
- perform work for a telephone, cable, or satellite company...

...there are specific sales and use tax regulations governing the taxability of these projects.

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Contractor Terms (continued)

## Building Materials

- Property (including fixtures) that will be annexed to real estate or to an improvement on real estate (see Reg-1-017-02).
- **Does not include:**
  - Tools;
  - Equipment;
  - Supplies; or
  - Other items not annexed.

Example: Rebar embedded in concrete is a building material. Form lumber is not.

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Contractor Terms (continued)

## Fixtures

- Equipment that must be annexed to a building or structure so that it can properly function.
- Fixtures remain identifiable as a separate item.  
Example: Water heater.

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Contractor Terms (continued)

## Contractor Options

- Contractor options apply only to construction contractor projects.
- Option chosen determines:
  - How sales and use tax is paid on building materials and fixtures; or
  - If sales tax is collected from the customer on building materials and fixtures
- Audits will be conducted based on the default option or option chosen. If an option is not chosen, default = Option 1.

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## Contractor Transactions

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Contractor Transactions (continued)

## Contractor's Transactions

- Retail sales (TPP & taxable services)
  - Building cleaning
  - Taxable at rate in effect where delivery occurs
- Contractor labor (Not taxable)
- Nontaxable services

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Contractor Transactions (continued)

## Option 1 Contractor

- Transactions with the supplier
  - Purchases building materials and fixtures for resale.
  - Must give Nebraska supplier a properly completed Form 13, Section C, Block 1.
- Transactions with the customer
  - Does not collect sales tax on separately stated labor charges.
  - Must collect sales tax on separately stated charges for building materials and fixtures.
  - If charges for building materials and labor are not separately stated, the entire amount is taxable.

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Contractor Transactions (continued)

## Option 2 Contractor

- Transactions with the supplier
  - Pays sales or use tax on purchases of building materials and fixtures.
- Transactions with the customer
  - Does not collect sales tax on any portion of the invoice. Cannot accept a Form 13.

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Contractor Transactions (continued)

## Option 3 Contractor

- Transactions with the supplier
  - Purchases building materials and fixtures tax-free.
  - Must give Nebraska supplier a properly completed Form 13, Section C, Block 1.
- Transactions with the customer
  - Must remit use tax at the rate in effect at the time and place of withdrawal of building materials and fixtures from inventory.
  - Does not collect sales tax on any portion of the invoice. Cannot accept a Form 13.

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# Form 13, Section C, Block 1

REVENUE		Nebraska Resale or Exempt Sale Certificate		FORM 13	
NAME AND MAILING ADDRESS OF PURCHASER			NAME AND MAILING ADDRESS OF SELLER		
Name			Name		
Street or Other Mailing Address			Street or Other Mailing Address		
City	State	Zip Code	City	State	Zip Code
Check Type of Certificate					
<input type="checkbox"/> Single Purchase <input type="checkbox"/> Resale    If Resale is checked, this certificate is valid until revoked in writing by the purchaser.					
I hereby certify that the purchase, lease, or rental by the above purchaser is exempt from the Nebraska sales tax for the following reason:					
Check One <input type="checkbox"/> Purchase for Resale (Complete Section A) <input type="checkbox"/> Exempt Purchase (Complete Section B) <input type="checkbox"/> Contractor (Complete Section C)					
<b>SECTION A—Nebraska Resale Certificate</b>					
I hereby certify that the purchase, lease, or rental of _____ (Description of Item or Service Purchased)					
from the above seller is exempt from the Nebraska sales tax as a purchase for resale, rental, or lease in the normal course of our business, either in the state or in another state, or as an agent or consignee of another person in the state.					
I further certify that we are engaged in business as a: <input type="checkbox"/> Wholesaler <input type="checkbox"/> Retailer <input type="checkbox"/> Manufacturer <input type="checkbox"/> Lessor					
of: _____ (Description of Product Sold, Leased, or Rented)					
and I hold Nebraska Sales Tax Permit Number: 01-			Name, State Reason		
or Foreign State Sales Tax Number: _____			Tax ID		
<b>SECTION B—Nebraska Exempt Sale Certificate</b>					
The basis for this exemption is exemption category: _____ (Enter appropriate category as described on reverse of this form.)					
If exemption category 2 or 5 is checked, enter the following information:					
Description of Exempt Purchase			Exempt Use of Exempt Purchase		
If exemption categories 3 or 4 are checked, enter the Nebraska Exemption Certificate number: 06-					
If exemption category 6 is checked, enter the following information and sign this form below:					
Description of Exempt Item			Date of Seller's Original Purchase	Was Tax Paid when Purchased by Seller?	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>SECTION C—For Contractors Only</b>					
1. Purchases of Building Materials or Fixtures:					
<input type="checkbox"/> As an Option 1 or Option 3 contractor, I hereby certify that purchases of building materials and fixtures from the above seller are exempt from Nebraska sales tax. My Nebraska Sales or Contractor's Use Tax Permit Number is: 01- _____					
2. Purchases Made Under Purchasing Agent Appointment on behalf of: _____ (Name of Client)					
<input type="checkbox"/> Pursuant to an attached Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, I hereby certify that purchases of building materials and fixtures are exempt from Nebraska sales tax.					
Any purchaser, or their agent, or other person who completes this certificate for any purchase which is other than for resale, lease, or rental in the regular course of the purchaser's business, will not otherwise exempt from the sales and use tax under this law. (See 687-2101 through 687-2110, Nebraska Revised Statutes.)					
I hereby certify that the above information is true and correct to the best of my knowledge and belief, and I am not aware of any facts which would render the above information false or misleading.					
sign here _____			Name _____ Title _____ State _____		

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Contractor Transactions (continued)

## Important Contractor Reminder!

Building materials do not include tools, equipment, or services that do not become annexed to real estate.

Contractors must pay sales and use tax on purchases of these items!

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Contractor Transactions (continued)

- Use tax is due when an Option 2 contractor purchases:
  - Building materials or fixtures picked up in another state
  - Building materials or fixtures delivered to the job site by a supplier who does not charge sales tax
- Use tax is due when on an Option 3 contractor withdraws building materials and fixtures out of inventory.
- Use tax is due when any contractor withdraws tax-free inventory for business or personal use.
  - Dry wall contractor repairs his own home
  - Plumbing contractor installs a new faucet in the office restroom

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Contractor Transactions (continued)

## Building Cleaning and Pest Control Services

- These services are not “contractor labor”, so are taxable (even when performed at the construction site).
- Contractors must pay sales tax on purchases of these services, even if the project owner is an exempt entity.

Example: Termite treatment, or a 3<sup>rd</sup> party crew hired to clean up inside a building.

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Contractor Transactions (continued)

## Cleaning annexed equipment is taxable building cleaning when the equipment is real property

If the annexed equipment facilitates the function of the building...

and

is intended to stay with the building...

then

the equipment is considered real property.

Examples:

- Furnace
- Air conditioner
- Water heater

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Contractor Transactions (continued)

## Cleaning annexed equipment is not taxable building cleaning when the equipment is TPP

If the annexed equipment facilitates the function of the business...

and

is **not** intended to stay with the building...

then

the equipment is considered tangible personal property. The cleaning of the equipment is not taxable.

Examples:

- Commercial ice maker
- Commercial oven

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Contractor Transactions (continued)

## Warranties & Guarantees

- Taxable when the item or service covered is taxable
- Tax exempt when covering items annexed to real estate

(Refer to Regulation 1-074 – Warranties & Guarantees for more information)

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Contractor Transactions (continued)

## Warranties & Guarantees

- Taxable
  - Charges invoiced for more than what the warranty covers
  - Deductibles
- Tax-exempt
  - Parts used and labor performed under warranty covering tangible personal property

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# Contracts with Exempt Entities

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Contracts with Exempt Entities

How do I know if the project owner is an exempt entity?

- Governmental Entity information guide (Reg-1-093)
- Nonprofit information guide (Reg-1-090)
- Nonprofit Healthcare Facilities (Reg-1-090)
- Contact the Department

Reminder: Not all nonprofits or governmental units are exempt from sales tax!

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Contracts with Exempt Entities (continued)

Be sure to get a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17.

Form 17 supports why tax was not paid or collected on building materials and fixtures for construction projects for exempt entities.

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Contracts with Exempt Entities (continued)

## Option 1 Prime Contractors

- Receive Form 17 and Form 13 from project owner prior to the start of the project.
- Complete the Delegation of Prime Contractor's Authority portion of the Form 17.
- Complete a Form 13 and provide it with a copy of the Form 17 to Option 1 subcontractors.
- Provide copies of the Form 17 to any Option 2 or 3 subcontractors on the project so they can buy building materials and fixtures sales tax exempt.

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Contracts with Exempt Entities (continued)

## Option 2 and 3 Prime Contractors

- Complete a Form 13 and provide it with a copy of the Form 17 to Option 1 subcontractors.
- Provide copies of the Form 17 to any Option 2 or 3 subcontractors on the project so they can buy building materials and fixtures sales tax exempt.

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Contracts with Exempt Entities (continued)

## Form 17

PURCHASING AGENT APPOINTMENT		FORM 17
Name and Address of Prime Contractor		Name and Address of Governmental Unit or Exempt Organization
Name		Name
Street or Other Mailing Address		Street or Other Mailing Address
City	State Zip Code	City State Zip Code
Name and Location of Project		Appointment Information
Name		Effective Date (see instructions)
Street or Other Mailing Address		Expiration Date
City	State Zip Code	Nebraska Exemption Number (Exempt Organizations Only)
Identify Project		
The undersigned governmental unit or exempt organization appoints the above-named contractor and the contractor's designated subcontractors as its agent to purchase and pay for building materials that will be annexed to and estate by them into the tax exempt construction project stated above.		
<div style="display: flex; justify-content: space-between;"> <div> <b>sign here</b>            Authorized Signature of Governmental Unit or Exempt Organization         </div> <div>           Title         </div> <div>           Date         </div> </div>		
DELEGATION OF PRIME CONTRACTOR'S AUTHORITY		
Name and Address of Subcontractor		Delegation Information
Name		Effective Date
Street or Other Mailing Address		Expiration Date
City	State Zip Code	Portion of Project
The undersigned prime contractor hereby delegates authority to act as the purchasing agent of the named governmental unit or exempt organization to the above-named subcontractor.		
<div style="display: flex; justify-content: space-between;"> <div> <b>sign here</b>            Signature of Prime Contractor or Authorized Representative         </div> <div>           Title         </div> <div>           Date         </div> </div>		

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Contracts with Exempt Entities (continued)

## Option 1 Subcontractors

- Purchase building materials & fixtures sales tax exempt by giving Form 13, Section C, Block 1 to their Nebraska supplier.
- Do not collect sales tax on items when they obtain a properly completed Form 17 and Form 13 prior to the start of the project.

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Contracts with Exempt Entities (continued)

## Option 2 Subcontractors

- Purchase building materials and fixtures sales tax exempt by giving –
  - A copy of Form 17, and
  - Form 13, Section C, Block 2 to their Nebraska supplier.

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Contracts with Exempt Entities (continued)

### Option 3 Subcontractors

- Purchase building materials & fixtures sales tax exempt by giving Form 13, Section C, Block 1 to their Nebraska supplier.
- Do not owe use tax on items when they obtain a properly completed Form 17 prior to the start of the project.

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Contracts with Exempt Entities (continued)

### Form 17 For All Contractors

- Only building materials and fixtures that become annexed to real estate may be purchased sales tax exempt.
- Contractors must pay sales or use tax on all purchases or rentals of equipment, tools, and taxable services used to complete the project.

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Contracts with Exempt Entities (continued)

### Refunds on Sales and Use Taxes Paid on Exempt Projects

- If a Form 17 is issued to the contractor prior to the contractor annexing building materials, the contractor can request a refund.
- If a Form 17 is not issued to the contractor in a timely manner, only the project owner can request a refund.
- The following are not allowed a refund:
  - United States Government;   ○ Nebraska University; and
  - Nebraska State College;      ○ State of Nebraska.

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Contracts with Exempt Entities (continued)

### Routine, On-call Repairs for Exempt Entities

- Contractors who are on-call for exempt entities may obtain a Form 17 for routine, on-call repair.
  - There must be a written agreement.
  - Form 17 is good for up to one year.
  - Option 1 contractors must also obtain a Form 13.

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## Landscapers

- Retail Sales
  - Live plants including sod
  - Labor charges to plant them
  - Pest control services (ex. grub control)
- Contractor Labor
  - Building or repairing retaining walls
  - Adding dirt for berms, or fountains in ponds
  - Installing and repairing underground sprinkler systems
- Nontaxable Services
  - Lawn mowing, fertilizing, or snow removal

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## Erosion Control

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## Erosion Control Issues

### Retail Sales

- Rock and gravel
  - Considered a retail sale when it is just dumped at a location. Collect tax from the customer.
- Silt fencing and erosion control checks and the labor to install them when not part of a construction project
  - Sales tax should be collected from the customer on materials and installation labor.

Silt fencing and erosion control checks remain tangible personal property after installation.

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### Contractor Labor

- The labor to install silt fencing and erosion control checks in addition to contractor labor
  - The labor is contractor labor. The contractor is the consumer of the materials for these items and must pay sales tax on them.

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Erosion Control Issues(continued)

**Contractor Labor**

- Spreading rock and gravel
- Spreading hay or straw over seed
- Drilling seed and hydro-seeding
- Installing erosion control netting
- The labor to apply erosion control blankets, mulch, and seed

Tax the building materials for these items according to contractor option.

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Erosion Control Issues(continued)

**Nontaxable services**

- Demolition and earth moving
  - When performed on a stand alone basis, this service is nontaxable.

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# **Building Materials and Fixtures for a Job Site Outside Nebraska**

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Job Site Outside Nebraska

**Option 1****No Nebraska sales or use tax liability**

- When withdrawing building materials and fixtures from tax-free inventory
- When building materials and fixtures are annexed to real estate in the other state.

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Job Site Outside Nebraska (continued)

## Option 2

### No Nebraska sales tax credit or refund

- When withdrawing building materials and fixtures from tax-paid inventory.
- Credit for sales tax paid may be available from the other state.
- They may have the supplier deliver materials to the job site out-of-state and pay no Nebraska sales or use tax.

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Job Site Outside Nebraska (continued)

## Option 3

### Remits use tax to Nebraska

- When withdrawing building materials and fixtures from tax-free inventory.
- At the rate in effect at the time and place inventory is withdrawn.
- They may have the supplier deliver materials to the job site out-of- state and pay no Nebraska use tax.

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## Repair or Annexation of Exempt Manufacturing Machinery and Equipment (MME)

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MME

- When work on MME involves charges for contractor labor:
  - Contractor labor is sales tax exempt; and
  - The contractor option chosen determines the taxability of purchases of MME, or any repair parts.

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## MME (continued)

## Option 1

- Obtains Form 13, Section B, Category 5 from the manufacturer.
- May purchase MME sales tax exempt.
- Does not collect sales tax on MME, provided a completed Form 13 is received from the manufacturer.

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MME (continued)

Form 13,

Section B

REVENUE		For Sales Tax Exemption Certificate		FORM 13	
• Read instructions on reverse side before filling out.					
NAME AND MAILING ADDRESS OF PURCHASER		NAME AND MAILING ADDRESS OF SELLER			
Name _____		Name _____			
Street or Other Mailing Address _____		Street or Other Mailing Address _____			
City _____ State _____ Zip Code _____		City _____ State _____ Zip Code _____			
<b>CHECK ONE</b>					
I hereby certify that the purchase, lease, or rental by the above purchaser is exempt from the Nebraska sales tax for the following reason:					
Check One <input type="checkbox"/> Purchase for Resale (Complete Section A) <input type="checkbox"/> Wholesale Purchase (Complete Section B) <input type="checkbox"/> Contractor (Complete Section C)					
<b>SECTION A — Nebraska Resale Certificate</b>					
Description of item or service purchased _____					
I hereby certify that the purchase, lease, or rental of the above item or service is exempt from the Nebraska sales tax as a purchase for resale, lease, or loan in the normal course of our business, either in the form or condition in which purchased, or as an ingredient or component part of other property to be resold.					
I further certify that we are engaged in business as a _____ Purchaser _____ Reseller _____ Manufacturer _____ Lessor _____					
of Description of Product Sold, Leased, or Rented _____					
and Valid Nebraska Sales Tax Permit Number: 01- _____ If None, State Reason _____					
or Foreign State Sales Tax Number _____ State _____					
<b>SECTION B — Nebraska Exempt Sale Certificate</b>					
The basis for this exemption is exemption category _____ (Short explanation category as described on reverse of this form.)					
If exemption category 2 or 5 is claimed, enter the following information:					
Description of Property Purchased _____		Estimated Date of Property Purchased _____			
If exemption categories 3 or 4 are claimed, enter the Nebraska Exemption Certificate number: 05- _____					
If exemption category 6 is claimed, enter name and state the following information:					
Description of Property Sold _____		Date of Seller's Original Purchase _____		Was Two Year Lease Contract Used by Buyer? _____	
				YES YES NO YES YES NO	
<b>SECTION C — For Contractors Only</b>					
<b>1. Purchases of Building Materials or Fixtures:</b>					
<input type="checkbox"/> As an Option 1 or Option 2 Contractor, I hereby certify that purchases of building materials and fixtures from the above seller are exempt from Nebraska sales tax. My Nebraska Sales Tax Exemption Certificate No. is: 01- _____					
<b>2. Purchases Made Under Purchasing Agent Appointment on behalf of _____ (insert entity):</b>					
<input type="checkbox"/> Pursuant to an attached Purchasing Agent Appointment and Delegation of Authority for Sales and Use Taxes, Form 17, I hereby certify that purchases of building materials and fixtures are exempt from Nebraska sales tax.					
<small>Any purchaser or agent, or other person who completes this certificate for any purchase which is for resale, lease, or rental in the regular course of trade or business, it is his/her obligation to inform the seller of such exemption status and obtain a written acknowledgment in writing therefor, or promptly provide appropriate support, be subject to a penalty of \$100 or less than the Nebraska revenue lost, whichever is greater. The seller shall retain the original certificate for his/her records. This certificate is void if the purchaser does not sign this certificate at the time of purchase. The certificate is subject, under penalties of law, to action being so authorized to sign this certificate, and to the level of my knowledge and belief. It cannot be altered.</small>					
<b>sign here</b> _____ <small>(indicated signature)</small>		Title _____ Date _____			

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## MME (continued)

## Options 2 and 3

- These contractors owe sales or use tax on MME and on parts purchased and annexed to manufacturer's real estate.
- Cannot accept a Form 13, Section B, Category 5 from the manufacturer.
- But, a manufacturer can purchase MME sales tax exempt directly from a 3<sup>rd</sup> party vendor.

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## Agenda Summary

- Overview of Sales and Use Tax
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- Building Materials and Fixtures for a Job Site Outside Nebraska
- Repair/Annexation of Exempt MME

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**REVENUE**

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Thank you!

General STX  
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